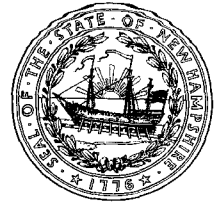




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Ernest and Constance Gagnon
49 Buckmeadow Road
Nashua, NH 03062

Re: 49 Buckmeadow Road, Nashua
Wetlands Bureau File # 2005-2821

ADMINISTRATIVE ORDER
No. WD 06-030

July 14, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Ernest and Constance Gagnon pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Ernest and Constance Gagnon are individuals having a mailing address of 49 Buckmeadow Road, Nashua, NH 03062.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III, provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. RSA 482-A:11, IV, specifies that any permit for work in or adjacent to prime wetlands shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after public hearing, that the

proposed activity, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1.

5. Ernest and Constance Gagnon are the owners of property located at 49 Buckmeadow Road in Nashua more particularly described on the Town of Nashua Tax Map C as Lot 18 ("the Property").

6. Review of DES records indicate that the Property contains wetlands that are designated as prime pursuant to RSA 482-A:15 by the City of Nashua.

7. Per Wt 303.02(f) projects located in or adjacent to prime wetlands designated under RSA 482-A:15 are classified as major impact.

8. On March 15, 2006, DES personnel conducted an inspection of the Property in response to a complaint from the City of Nashua. During the inspection, DES personnel found the following:

- a. Approximately 30 linear feet had been excavated through a berm for the purpose of draining a man-made pond.
- b. Approximately 5,340 sq. ft. (890 linear feet by 6 feet in width) of jurisdictional wetland had been dredged in and adjacent to the Old Ridge Road Prime Wetland (hereinafter "Prime Wetland").
- c. A minimum of 3,500 sq ft of wetlands at the intersection of the dredged trench and Cold Brook had been filled with spoils from the dredged trench.
- d. The side slopes of the dredged area were steep, unstable, and eroding. The dredged trench appeared to have intercepted the water table potentially altering the hydrology of the Prime Wetland.

9. During the March 15, 2006 inspection, DES personnel gave Mr. Gagnon a Field Inspection Report requesting that he stop all work except for installation of erosion control measures, that he contact a wetland scientist to restore the site, and immediately stabilize the slope by the well.

10. Subsequent research by DES personnel suggests that Mr. Gagnon may have impacted wetlands on the abutting property (Map C, Lot 28) as well.

11. On April 5, 2006, DES was contacted by Flaherty and Associates, an environmental consulting firm, and notified that they had been retained by Mr. Gagnon to develop a restoration plan.

12. Review of DES records show that no permit was issued under RSA 482-A for the work observed on the Property.

D. DETERMINATION OF VIOLATIONS

1. Mr. and Mrs. Gagnon have violated RSA 482-A:3, I by dredging approximately 5,340 sq. ft. of a jurisdictional wetland in and adjacent to designated prime wetlands without a permit from DES.

2. Mr. and Mrs. Gagnon have violated RSA 482-A:3, I by filling approximately 3,500 square feet of jurisdictional wetland in and adjacent to designated prime wetlands without a permit from DES.
3. Mr. and Mrs. Gagnon have violated RSA 482-A:3 by failing to properly install and maintain temporary siltation and erosion controls to protect immediately adjacent wetlands and surface waters.

E. ORDER

Based on the above findings, DES hereby orders Mr. and Mrs. Gagnon as follows:

1. **Immediately cease and desist** all work in wetlands and surface waters except as specifically Ordered in E.2 through E.5, below.
2. **Within 30 days from the date of this Order**, submit a restoration plan to DES for review and approval. Have the restoration plan prepared and stamped by a certified wetland scientist. The plan should include provisions for removal of the dredged material from the wetland/prime wetland and restoration of the ditched area in the wetland/prime wetland on the Property and include the following:
 - a. Existing conditions and land topography with dimensions drawn to scale including wetland boundaries delineated in accordance with the 1987 Army Corps of Engineers Wetland Delineation Manual and the boundary of the prime wetland;
 - b. The location of the property boundary in relation to the unpermitted impacts.
 - c. Proposed conditions after re-establishing the jurisdictional area;
 - d. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - e. A detailed description of the proposed planting plan for the stabilization and re-vegetation of the restoration area and of the method of control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - f. A description of the proposed restoration sequence detailing the methods for accomplishing restoration and including an anticipated restoration compliance date;
 - g. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include, at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. The monitoring reports should be submitted to DES no later than September 1, 2007 and September 1, 2008.

3. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.
4. Implement the restoration plan after receiving written approval from and as conditioned by DES, in accordance with the proposed schedule.
5. Monitor and maintain all existing erosion controls until restoration is completed and the site is permanently stabilized. Submit photographs to DES mounted on 8.5" x 11" white paper by the last day of each month documenting compliance with this provision of the Order.
6. A Standard Dredge and Fill application must be filed and a permit obtained for any proposed work to the man-made pond. Any application will be reviewed, approved or denied, based on the regulations in place at the time of filing.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Eric Skoglund, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: eskoglund@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Mr. or Mrs. Gagnon of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. and Mrs. Gagnon remain obligated to comply with all applicable requirements. DES will continue to monitor Mr. and Mrs. Gagnon's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



COPY

Harry T. Stewart, P.E., Director
Water Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7006 0100 0005 8153 5320

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
City of Nashua Conservation Commission
City of Nashua Mayor and Board of Aldermen
Gary Flaherty c/o Flaherty & Assoc., 335 Broad Street, Hollis, NH 03049